

SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS

§§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13,
39.15, 39.17, 39.19, 39.21, 39.23, and 39.25
Effective June 5, 1997

§39.1. Applicability.

This chapter applies to:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, Chapter 26.

(A) This paragraph includes:

(i) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(ii) applications for permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations).

(B) This paragraph does not include:

(i) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), other than applications under Subchapter B of this chapter;

(ii) applications for authorizations under Chapter 312 of this title, except applications for a permit under the chapter; and

(iii) applications under Chapter 332 of this title (relating to Composting);

(3) applications for underground injection well permits under Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations under Chapter 331 of this title (relating to Underground Injection Control);

(5) hearings under Chapter 80 of this title (relating to Contested Case Hearings) concerning applications for air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(6) hearings on contested enforcement cases under Chapter 80 of this title; and

(7) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Adopted May 14, 1997

Effective June 5, 1997

§39.3. Purpose.

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

Adopted December 4, 1996

Effective January 8, 1997

§39.5. General Provisions.

(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application for a facility, notice may be combined to satisfy more than one section of this chapter.

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must

be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(h) When this chapter requires notice be broadcast according to this subsection, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

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§39.7. Mailing Lists.

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

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Effective January 8, 1997

§39.9. Deadline for Public Comment and Hearing Requests.

Notice under this chapter will specify a deadline to file public comment and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

Adopted December 4, 1996

Effective January 8, 1997

§39.11. Text of Public Notice.

When notice by publication or by mail is required by this chapter, the text of the notice must include:

- (1) the name and address of the agency;
- (2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;
- (3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures, and the time and place of any public meeting or public hearing;

(6) a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation;

(7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;

(10) if applicable, the deadline to file comments and, if applicable, hearing requests;

(11) a statement of whether the executive director has prepared a draft permit;

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies; and

(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

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Effective June 5, 1997

§39.13. Mailed Notice.

(a) When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) The county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations, §124.10(c);

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory Council;

(11) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

(12) any other person the executive director or chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal Coordination Council; and

(14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

(b) This section does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

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Effective June 5, 1997

§39.15. Public Notice Not Required for Certain Types of Applications.

(a) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) Texas pollutant discharge elimination system minor amendments under Texas Water Code, Chapter 26;

(4) applications for transportation route special permits under §330.32 of this title (relating to Collection and Transportation Requirements).

(b) For the voluntary transfer of permits, no public notice shall be required, except that:

(1) except as provided in paragraph (2) of this subsection, notice of applications for the voluntary transfer of permits concerning hazardous waste facilities shall be made under §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit);

(2) for notice of applications for the voluntary transfer of permits concerning underground injection wells (including injection wells for the disposal of hazardous waste), the chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice) and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions). The deadline to file public comment is ten days after mailing; and

(3) if the executive director determines that changes to the permit in addition to the transfer are necessary, other notice requirements may apply.

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Effective January 8, 1997

§39.17. Notice of Minor Amendment.

(a) The only required notice for applications seeking a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice). The deadline to file public comment is ten days after mailing.

(b) Subsection (a) of this section does not apply to:

(1) applications seeking a minor amendment of a wastewater discharge permit. For such applications, the notice requirements are in §39.151(c) of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

(2) applications for a minor amendment to radioactive material licenses. For such applications, the notice requirements are specified in Subchapter F of Chapter 39 of this title (relating to Public Notice of Radioactive Material License Applications).

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§39.19. Notice of Executive Director's Recommendation to Deny Application.

If the executive director recommends denial of an application, the notice of that recommendation shall be given under the requirements for notice of draft permit for that type of application. This section does not apply if notice of the draft permit has been issued already.

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Effective January 8, 1997

§39.21. Notice of Commission Meeting to Evaluate a Hearing Request on an Application.

If, under Chapter 55 of this title (relating to Request for Contested Case Hearings), a hearing request on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request no later than 30 days before the first meeting at which the commission considers the hearing request.

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Effective January 8, 1997

§39.23. Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests.

(a) The chief clerk shall mail notice to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment or hearing requests concerning the application on or before the deadline specified under §39.9 of this title (relating to Deadline for Public Comment and Hearing Requests). The notice shall be mailed no less than ten days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter.

(b) Other requirements in this chapter concerning notice of hearing apply. However, if the commission refers an application to SOAH and requests the judge to submit a written recommendation on the sole question of whether hearing requests meet the requirements of Chapter 55, Subchapter B of this title (relating to Hearing Requests), the only notice shall be as required in subsection (a) of this section.

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

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Effective January 8, 1997

§39.25. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall give notice to the parties in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

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